

Office of Information Practices (OIP)

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OIP administers:

- Uniform Information Practices Act (“UIPA”), HRS Chapter 92F – open records
- Sunshine Law, Part I of HRS Chap. 92 – open meetings

Today's presentation:



- A broad, overall summary of the **Sunshine Law**
- A 2017 legislative update
- Many free resources online
at *oip.hawaii.gov*

Policy of Sunshine Law:



“[I]t is the policy of this State that the formation and conduct of public policy -- the discussions, deliberations, decisions and actions of government agencies -- shall be conducted as openly as possible.”

Sunshine Law:



- Protects public's right to know
- Open meeting provisions to be liberally construed while **exceptions to be strictly construed against closed meetings**

Sunshine Law requires:



- 1. : Discussions, deliberations, & decisions only at open meetings**
- 2. Public meeting and testimony allowed**
- 3. Notice and agenda--6 days in advance**
- 4. Minutes--available within 30 days upon request, whether or not approved**

Sunshine Law requires:



**All discussions, deliberations
and decisions must be
conducted at a meeting open
to the public.**

Sunshine Law applies to:



- State and county “**Boards**”
(including commissions, agencies, authorities, county councils)
- when discussing **Board Business**

Quorum—meeting requirement

- Majority of all members to which the board is entitled
- Must have quorum to do business (i.e., discuss, deliberate, take action)
- Meeting must end if quorum lost.

The Sunshine Law does not apply to:

The general public, lobbyists, reporters, government officials, or board staff.

- AND -

1-2 board members' discussions with the general public, etc.

“Board Business”

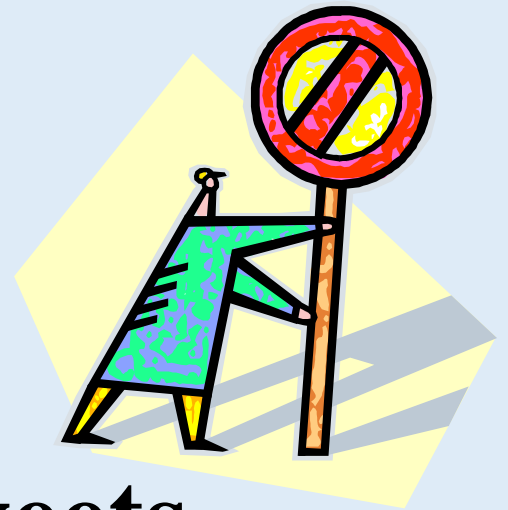


- Specific matters over which the board has supervision, control, jurisdiction or advisory power
- which are currently or reasonably anticipated to come before the board in the foreseeable future

If **not** in an open meeting and have more than 2 members, **STOP** to think:

- **No** discussions
- **No** memos
- **No** e-mails
- **No** texting
- **No** Facebook posts or tweets
- **No** polling
- **No** serial communications

ABOUT BOARD BUSINESS

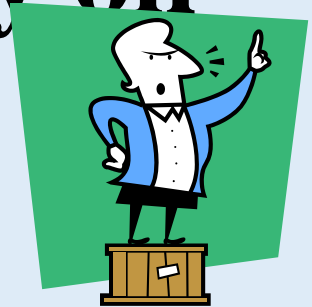


Sunshine Law requires:

Boards must allow the public to attend meetings.

Boards must accept testimony on agenda items.

- **Must allow testimony on executive session items**



Executive Sessions



- Closed to public
- **Cannot close** meeting simply because matter is embarrassing or about highly personal or proprietary information
- **Must be for one of 8 specific reasons provided in HRS § 92-5**

Executive Session Purposes

- **Authority of negotiator re purchasing public property or labor or during negotiations**
- **Legal matters with board's attorney**
- **Personnel matters affecting privacy**
- **Confidential information by law, court order**
- **Criminal misconduct**
- **Public safety**
- **Private donations**
- **Professional licensure**

Executive Session Procedures

- **Public announcement** of purpose
- **2/3 vote** of board members present at open meeting & majority of members to which the board is entitled
- **Vote recorded** and entered into minutes

Executive Session Minutes

- Although the executive session is closed to the public, **minutes must be kept.**
- **Executive session minutes may be kept confidential only for so long as their disclosure would defeat the lawful purpose of having a closed meeting.**
- **But in future, the minutes might be disclosable.**

Chance Meeting

Chance meeting is a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

Limited Meetings

- **2/3 vote at regular meeting**
- **Dangerous location OR public attendance impracticable**
- **Need OIP Director's concurrence**

(HRS § 92-3.1)



Limited Meetings

- 6-days advance **notice and agenda**
- Written **minutes**
- Show **video** at next regular meeting
- **No decisions made**

Forms on OIP's website

Emergency Meetings

- Imminent peril to public health, safety and welfare, or
- Unanticipated event
- Requires meeting in less than 6 calendar days

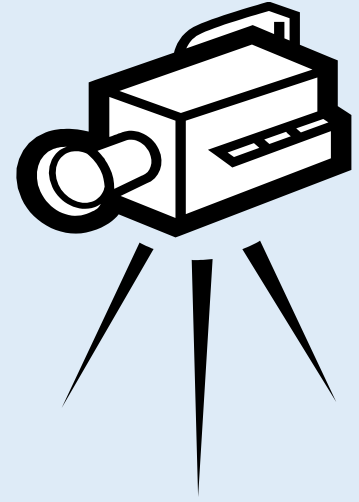
(HRS § 92-8)



Emergency Meetings

- 2/3 vote of all members to which the Board is entitled
- **Attorney General's concurrence** for an unanticipated event
- Agenda and findings are filed
- Contact persons on mailing list ASAP

Interactive Conference Technology Meetings



- Teleconference, Skype, etc.
- Must allow interaction between all board members & public at all locations
- Notice where board members will be
- Notice must state that the public can attend at any location
- Meeting ends if audio not maintained at all locations

Permitted Interactions allow board members to discuss board business outside of open meetings, so long as statutory restrictions are met.
(HRS § 92-2.5)

Permitted Interaction #1:

Only 2 members
(if less than a quorum)

- Can communicate privately between themselves
- **Cannot** commit to vote
- **Cannot** seek commitment
- **Cannot** use serially



Permitted Interaction #2:

Investigations; less than a quorum

Examples:

- Confidential interviews
- Site inspections and product demonstrations
- Receipt and consideration of confidential information



Permitted Interaction #2:



Procedures:

- Scope of Permitted Interaction Group's (PIG) investigation is defined by board at first meeting, open to public
 - After that, PIG can meet privately
- Findings and recommendations presented by PIG to board at second meeting
- Deliberation and decision-making by board at third meeting

Permitted Interaction #3:

Negotiations; less than a quorum

- To present, discuss, or negotiate any position adopted by board at a meeting
- **3-meeting requirement for investigatory PIG is not applicable**

Permitted Interaction #4:

**Selection of board officers;
less than a quorum**

- **Discuss the selection of the board's officers**
- **No serial communications**

Permitted Interaction #5:

Meeting with Governor

- **Cannot be about adjudicatory matters**

Permitted Interaction #6:

Meeting with Department Head

- **Can discuss administrative matters with head of department to which it is administratively assigned**
- ***E.g., budget; employment matters re board's officers and employees; purchases of supplies, equipment, furniture; space allocation***

Permitted Interaction #7:

Cancelled meeting

- If meeting cancelled due to lack of quorum or tech problems, can still receive testimony and ask questions
- No deliberation or decisions
- Create a record and report at next board meeting

Permitted Interaction #8:

Informational meetings; less than a quorum

- **Meeting cannot be specifically and exclusively organized for or directed to board**
- **Can discuss board business, but no commitment to vote can be made or sought**
- **Report attendance and matters discussed at next open board meeting**

Permitted Interaction #8:

Informational meetings; less than a quorum

- Ok to attend legislative hearing, convention, seminar, or community event if less than quorum
- Not applicable to a quorum or more of board members

Sunshine Law requires:



Boards must provide written **notice**
six calendar **days** in advance along
with a sufficiently descriptive
agenda

- Must provide **reasonable notice of what the board intends to consider**, so that the public can decide whether to participate
- **Final action may be voided by the court due to improper notice**

PEST CONTROL BOARD


Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

BOARD MEETING AGENDA

Date: Monday, September 27, 2004

Time: 2:00 p.m.

Place: King Kalakaua Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, HI 96813

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8. Correspondence
 9. Unfinished Business
 - a. Rule Revisions
 - b. Other (if any)
 10. Scope
 11. New Business
 12. Announcements

Sunshine Law:



NEW Requirement:

Effective July 1, 2018, Sunshine Law will require:

Electronic notice of board meetings

- Post on state or county electronic calendar
- Continue to file with LG or County Clerk – but electronic calendar is the official notice
- Notify persons on notification list by postal mail or e-mail – failure to do so will require cancellation of meeting

Sunshine Law:



NEW Requirement:

Effective July 1, 2018, Sunshine Law will require:

Board packets to be made available for public inspection when distributed to board members

- For records that are public under UIPA
- Excludes executive session minutes, license applications, or other records that board cannot reasonably redact in time for its meeting
- Packets need not be mailed to requesters, but boards must e-mail as soon as practicable

Amending the Agenda

--At the Meeting--

By 2/3 vote of total number of all members to which the board is entitled

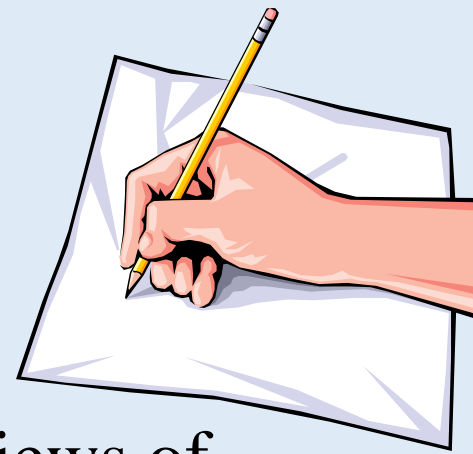
- **Cannot add** item if:
 - of reasonably major importance
 - will affect a significant number of people



Continuing a Meeting

- Announce continuance to reasonable place and time.
- No new notice to be filed since board is completing an agenda that was previously filed.
- Follow OIP's advice on how to inform the public of the continuance.

Minutes



- Written minutes required
- True reflection of matters discussed and views of participants
- Date, time and place
- Members present/absent
- Substance of all matters proposed, discussed or decided
- Record, by member, of votes
- Other information that a member requests be included
- Minutes must be public 30 days after meeting

Sunshine Law requires:



Minutes must be available within 30 days upon request

- **No requirement for Board's approval of minutes before disclosure**
- **Use staff to circulate draft minutes – avoid serial communications**
- **But under UIPA, people may request tape recordings or draft of minutes, which must generally be provided within 10 work days**
- **No requirement for transcripts**

Sunshine Law:



NEW Requirement:

Effective July 1, 2018, Sunshine Law will require:

Meeting minutes to be posted online within 40 days after board's meeting.

- Currently, boards must make minutes available upon request within 30 days.
- SL does not require boards to approve minutes – draft minutes will have to be posted.
- If post a recording, will still need a written summary.

Sunshine Law:

NEW OPTION:

Effective July 1, 2018, Sunshine Law will give option:

Meeting minutes may be kept in recorded form (e.g. audio tape), with a written summary that includes:

- Date, time, and place of meeting
- Board members **present/absent** and when they entered or left meeting
- Motions and votes, as made by individual members
- Time reference to find agenda items, motions, votes in the recording



Penalties and Consequences

- **Public and media complaints**
- **Adverse OIP and court decisions**

- **Potential misdemeanor**
- **Lose immunity from liability**
- **Removed from board**

OIP's Role

- Advise boards about laws' requirements
- Receive & resolve complaints from public
- Determine whether a body is subject to Sunshine Law
- OIP's opinions & rulings upheld by court (unless palpably erroneous)

Court's Role

- Lawsuits can be filed to prevent violation, require compliance or determine if Sunshine Law applies
- Court can enjoin or void action, order payments of fees & costs
- Enforcement by Atty Gen & Prosecutor

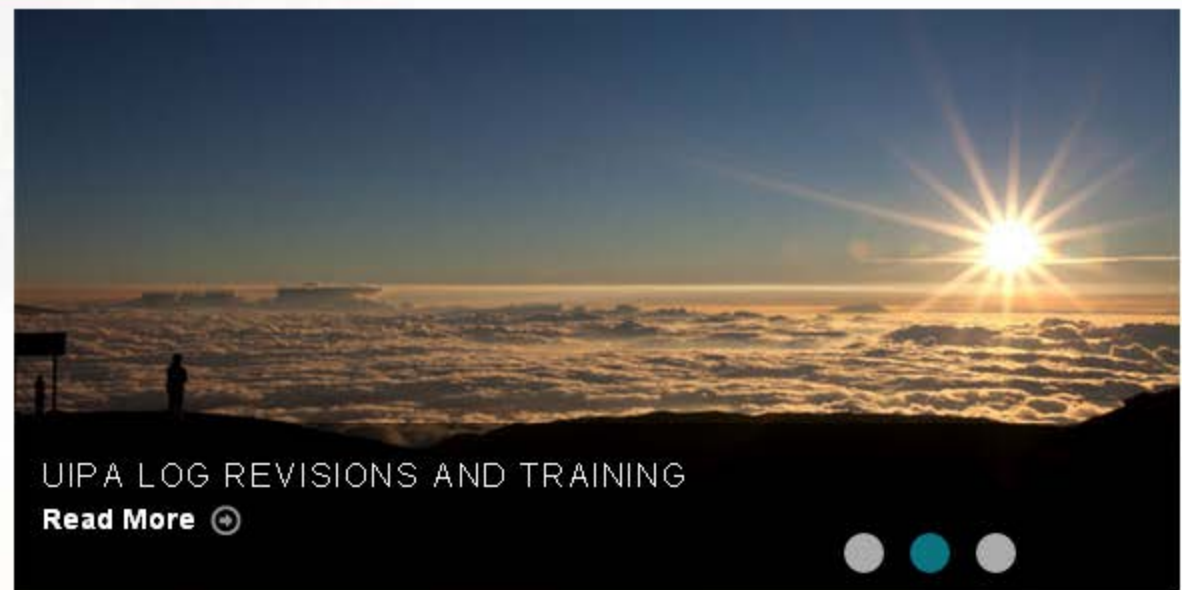


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Office of Information Practices

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ALOHA!

Need Help?

- **Attorney of the Day:**

Call **586-1400** or E-mail ois@hawaii.gov

- Fax: **586-1412**

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